IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.2370 OF 2007(T)
AND
M.P.NO.1 OF 2007
(OA.No.1414/2001)

V.Mukundhan .. Petitioner

Vs.

1.The Superintendent,
Central Prison,
Trichy-620 020.
2.The Additional Superintendent,
Central Prison,
Trichy-620 020. .. Respondents

This writ petition has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records and to quash the impugned order passed by the first respondent herein in his proceedings No.7112/Po.2/99, dated 14.11.2000 with all consequential monetary and service benefits.

For Petitioner : Mr.G.Bala

For Respondents : Mr.V.Arun, AGP

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ORDER

Challenging an order of dismissal, originally the petitioner has filed O.A.No.1414 of 2001 on the file of the Tamil Nadu Administrative Tribunal and on transfer to this court, it was taken up as the writ petition.

2.The writ petition challenges an order of dismissal passed by the first respondent on 14.11.2000, pursuant to the domestic enquiry.

3.The court heard the learned counsel on either side. The short facts necessary for the disposal of the writ petition can be stated thus:

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The petitioner was working as Warden in Central Prison, Trichy. On 22.4.1999, an incident took place, in which the petitioner was found in possession of 400 grams of Kanja, following which a charge memo was issued under Rule 17(b) of Conduct Rules by the Superintendent, Central Prison, Trichy. Apart from that, a criminal case came to be registered against the petitioner in Crime No.96 of 1999. The case was being tried before the criminal court and it ended in acquittal. Even before the criminal proceedings came to an end, an explanation was called for, explanation was tendered, charges were framed, enquiry was conducted and on 14.11.2000, the petitioner was terminated from service on recording a finding that charges levelled against the petitioner were proved. The petitioner challenges the same before the Tamil Nadu Administrative Tribunal and on transfer, the matter has been brought before this court by way of the writ petition.

4.In support of the writ petition, the learned counsel for the petitioner has raised two points. Firstly, according to the department, the occurrence has taken place on 22.4.1999 and the petitioner was found in possession of 400 grams of Kanja, pursuant to which, a charge memo under Rule 17(b) was issued by the respondents and a criminal case also came to be registered in Crime No.96/99. Even before the proceedings in the criminal court are over, the department has proceeded in a haste and hurried manner, called for explanation, conducted enquiry, which was not in strict terms and has recorded a finding that charges were proved and has also passed the dismissal order on 14.11.2000. But, the criminal proceedings came to an end only on 17.3.2005. It has been held by the Supreme Court that while criminal proceedings are pending on the same facts and allegations, the departmental enquiry must be stayed or kept in abeyance till the criminal proceedings are over, but in the instant case, the department hastily passed an order of dismissal of the petitioner from service, which was bad. Secondly, in the instant case, the criminal court has acquitted him on two grounds that the investigating officer was not examined and apart from that what was allegedly found to be in possession of the petitioner and recovered from him was not proved by the department that it was Kanja. The facts and circumstances fatally affects the entire findings recorded by the domestic enquiry officer and hence, the order of dismissal from service has got to be set aside.

5.The court heard the learned counsel for the respondents also.

6.The court has paid its anxious consideration on the submissions made. In the instant case, following the incident that took place on 22.4.1999, charge memo was issued, alleging that the petitioner was found in possession of 400 grams of Kanga. It is not in controversy that he tendered explanation and actually, enquiry was conducted by a competent officer and he was

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found guilty as per the charge and punishment of termination of service was awarded on him. The petitioner has challenged the said order of termination of service mainly on the ground that when the domestic enquiry was pending, a parallel proceedings were pending before the criminal court and the petitioner has sought that the proceedings on the domestic enquiry has got to be stayed, but it was not done and hence, it would vitiate the proceedings of domestic enquiry. Secondly, when the matter was pending, the criminal court has acquitted the petitioner on the ground that the investigating officer was not examined and also the property in possession of the petitioner was not proved as Kanja and hence, it has recorded a finding that the charges levelled was not proved and under these circumstances, on those grounds, the order of termination of service of the petitioner has got to be set aside.

7.After looking into the available materials, the court is of the considered opinion that the writ petition requires an order of dismissal. Firstly, the petitioner herein was a Warden attached to Central Prison, Trichy. On the date of the incident, namely on 22.4.1999, he was found in possession of 400 grams of Kanja, according to the charges made. In order to substantiate the charges, at the time of domestic enquiry, three witnesses have been examined and the witnesses have also been cross examined and they have spoken as to the possession of Kanja by the petitioner. So far as the domestic enquiry was concerned, proper opportunity was given. It is not a case where opportunity was denied to the petitioner. Now, the main contention is that at the time when the proceedings were pending before the domestic enquiry, a parallel criminal proceedings were also pending. Under these circumstances, it would vitiate the domestic enquiry, since it was not kept in abeyance. Further, the same witnesses were examined before the criminal court and the criminal court has acquitted him. The court is of the considered opinion that this contention has got to be rejected. The Honourable Division Bench of this court had an occasion to consider the same as to the parallel proceedings and has pointed out that the standard of proof required in domestic enquiry and also in the criminal court are different and that cannot be taken as a plea to discharge the delinquent from the charges levelled against him. The court is of the considered opinion that it is a fit case where the decision of the Division Bench in W.P.Nos.32552 and 33077 of 2002 is squarely applicable to the facts of this case. The learned counsel for the petitioner has relied on two points that the proceedings were parallel and also the ground on which he was acquitted by the criminal court. The court is unable to see any force in the contentions for the reasons as stated above. The court agrees with the counsel for the respondents. In a given case where the Warden of the Central Prison, Trichy was found in possession of 400 grams of Kanja, which in the opinion of the court would be against the social order and under these circumstances, the termination of service as done by the authorities below has got to be sustained. Accordingly, it is sustained and there is nothing to be interfered with the same.

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Accordingly, this writ petition is dismissed. No costs. Consequently, the connected MP is also dismissed.

vvk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Superintendent,
Central Prison,
Trichy-620 020.

2.The Additional Superintendent,
Central Prison,
Trichy-620 020.

+ 1 cc to mr. G. Bala, Advocate SR No. 58903

+ 1 cc to the Government Pleader, SR No.59099

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